

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CSX CORPORATION,

Plaintiff,

v.

THE CHILDREN'S INVESTMENT FUND
MANAGEMENT (UK) LLP, THE CHILDREN'S
INVESTMENT FUND MANAGEMENT
(CAYMAN) LTD., THE CHILDREN'S
INVESTMENT MASTER FUND, 3G CAPITAL
PARTNERS LTD., 3G CAPITAL PARTNERS,
L.P., 3G FUND, L.P., CHRISTOPHER HOHN,
SNEHAL AMIN AND ALEXANDRE
BEHRING, A/K/A ALEXANDRE BEHRING
COSTA,

Defendants.

ECF Case

08 Civ. 02764 (LAK) (KNF)

THE CHILDREN'S INVESTMENT MASTER
FUND,

Counterclaim and Third-
Party Plaintiff,

v.

CSX CORPORATION AND MICHAEL WARD,

Counterclaim and Third-
Party Defendants.

**DECLARATION OF
HOWARD O. GODNICK**

3G CAPITAL PARTNERS LTD., 3G CAPITAL
PARTNERS, L.P. AND 3G FUND, L.P.,

Counterclaim Plaintiffs,

v.

CSX CORPORATION AND MICHAEL WARD,

Counterclaim Defendants.

HOWARD O. GODNICK, an attorney duly admitted to practice before this Court, hereby affirms the following to be true under penalties of perjury:

1. I am a member of the Bar of the State of New York and a partner with the firm of Schulte Roth & Zabel LLP, counsel to The Children's Investment Fund Management (UK) LLP, The Children's Investment Fund Management (Cayman) Ltd., The Children's Investment Master Fund (together, "TCI"), Christopher Hohn, and Snehal Amin. I submit this declaration in opposition to Plaintiff's Motion for Leave to file CSX's Response to the Letter of Prof. Bernard Black Submitted to the SEC.

2. Attached hereto as Exhibit 1 is a true and correct copy of a letter dated June 2, 2008 from Howard O. Godnick to the Honorable Lewis A. Kaplan opposing CSX Corporation's Motion for Leave to file CSX's Response to the Letter of Prof. Bernard Black Submitted to the SEC.

/s/ Howard O. Godnick

Howard O. Godnick

Dated: New York, New York
June 2, 2008

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June 2, 2008

VIA ELECTRONIC FILING and HAND DELIVERY

The Honorable Lewis A. Kaplan
United States District Court Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: CSX Corporation v. The Children's Investment Fund
Management (UK) LLP, et al., 08 CV 02764 (LAK)(KNF)

Dear Judge Kaplan:

We represent defendants The Children's Investment Fund Management (UK) LLP, The Children's Investment Fund Management (Cayman) Ltd., The Children's Investment Master Fund, Christopher Hohn and Snehal Amin (together "TCI") in the above-referenced action. We write on behalf of all Defendants in this matter to oppose CSX Corporation's Motion for Leave to file CSX's Response to the Letter of Prof. Bernard Black Submitted to the SEC, which was filed earlier today.

The Court heard testimony in this matter on May 21 and 22. At the close of the hearing, the Court instructed the parties to submit post-trial briefing as follows:

- initial briefing no later than 5 p.m. on May 27;
- reply briefs no later than 4 p.m. on May 29 (the Court subsequently extended this time to 6 p.m.).

Together, Plaintiff and Defendants submitted approximately 500 pages of post-trial argument.

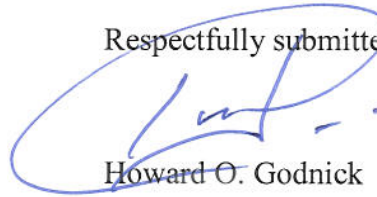
On May 22, 2008, Your Honor asked the Securities and Exchange Commission (the "SEC") to provide by June 4 its views on two questions and "requested the parties to contact [the SEC] to provide any information [the SEC] may require." Among other things, the Defendants provided a May 29, 2008, letter to the SEC from Prof. Bernard S. Black. On May 30, 2008, we provided a courtesy copy of that letter to Your Honor. We did not provide the Court with counsel's legal argument to the SEC because we believed any such supplementation of the legal briefing in this matter to be outside the Court's specific directions on post-trial briefing.

The Honorable Lewis A. Kaplan
May 20, 2008
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Today, CSX Corporation ("CSX") has sought leave of Court to file certain submissions it made to the SEC. Among those submissions is a 27 page, single-spaced letter-brief, dated today, June 2, in which counsel for CSX, Mr. Millson, marshals CSX's view of the facts adduced at trial, and makes legal argument based on counsel's characterization of those purported facts. Given the ample opportunity that the Court provided for the parties to file post-trial briefs, and the specific deadlines by which the Court required those filings, we respectfully submit that Mr. Millson's June 2 sur-reply letter-brief, although addressed to the SEC, constitutes the filing of an unauthorized post-trial sur-reply brief in this matter.

We have no objection to CSX filing the letter of Profs. Grundfest, Hu and Subrahmanyam. However, we respectfully request that the Court deny CSX's motion to the extent it seeks to file Mr. Millson's sur-reply letter-brief. Alternatively, if the Court grants leave for the filing of Mr. Millson's sur-reply letter-brief, we respectfully request leave of Court to file a sur-reply no later than 5 p.m. on June 4.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "H. Godnick", is written over a large, loopy blue circular scribble.

Howard O. Godnick

cc: Rory Millson, Esq.
Peter Doyle, Esq.